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STATE OF ARIZONA

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DEPARTMENT OF INSURANCE

In the Matter of:)	
DAVID ALAN BERENTER,)	Docket No. 01A-204INS
Respondent.)	ORDER OF CEASE & DESIST
)	

The Director of Insurance for the State of Arizona, (Director) has cause to believe that David Alan Berenter (Berenter) acted as and held himself out to be an adjuster in this state without being duly authorized therefor. Accordingly, the Director now orders Respondent to cease and desist pursuant to A.R.S. § 20-305.

FINDINGS OF FACT

- 1. The Director is charged with the enforcement of Title 20, Arizona Revised Statutes.
- 2. David Alan Berenter (Berenter) is not currently and was not at any material time licensed as an adjuster. Berenter was previously licensed as an adjuster in Arizona and that license was revoked by Order of the Director on November 5, 1990 In The Matter of David Alan Berenter, Docket No. 7194 based on a record of a final conviction of a felony involving moral turpitude.
- 3. Robert Clifford Kane (Kane) is not currently and was not at any material time licensed as an adjuster. Kane was previously licensed as an adjuster in Arizona and that license was revoked by Order of the Director on January 2, 1997 In The Matter of Robert Clifford Kane, dba Pinnacle-Loss Claims Representatives, Docket No. 96A-123-INS. The Order included findings that Berenter, with Kane's knowledge and consent, was adjusting claims using Kane's adjuster's license.
- 4. Monte J. Bauer (Bauer), dba Monte J. Bauer and Associates is not currently licensed as an adjuster. Bauer was previously licensed as an adjuster in Arizona and that license was revoked by

Order of the Director on July 23, 2001 In The Matter of Monte J. Bauer, Docket No. 01A-189-INS. In the Order, Bauer admitted that over the course of approximately nine years Berenter investigated and negotiated first party insurance claims on Bauer's behalf. In payment for Berenter's services, Bauer paid him a percentage of the amount recovered on each claim.

5. From and about 1992 to July 2001, Berenter contracted with Bauer and Associates. Berenter met with insurance company claim representatives at loss sites, investigated the loss and determined damages and negotiated first party insurance claims on behalf of Bauer.

COUNT I

- 6. On or about February 10, 2001, Bauer entered into a representation agreement with Ruth and Fernado Maldonado (the Maldonados) to investigate and negotiate a settlement of a fire loss claim on their home. This agreement was signed by Berenter.
- 7. On or about February 13, 2001, Berenter notified the Maldonado's insurer, American National Property & Casualty Insurance Company (ANPAC), through its adjuster, that Bauer had been retained to represent the Maldonados in the negotiation and settlement of their claim. The notification was signed by Berenter with the notation "For The Firm."
- 8. On or about February 14, 2001, Berenter, Kane and Bauer met with ANPAC's adjuster to walk-thru the damages to the Maldonados' home. Although Bauer was physically present at this initial walk-thru, Berenter assessed all of the damages. Bauer did not participate in the walk-thru. Kane's role was limited to answering one or two of Berenter's questions.
- 9. Throughout February and March 2001, Berenter sent 10 separate pieces of correspondence with various demands to ANPAC to settle the Maldonados' claim. These documents were all signed by Berenter and included the notation "For The Firm." With the exception of the initial

walk-thru, all oral discussions with ANPAC about the scope and the settlement of the Maldanados' claim were conducted by Berenter.

COUNT II

- 10. On or about February 22, 2001, Bauer entered into a representation agreement with Alfred and Ernestina Garcia (the Garcia's) to investigate and negotiate a settlement of a fire loss claim on their home. This agreement was signed by Kane.
- 11. On or about February 22, 2001, Berenter notified the Garcia's insurer, American Summit Insurance Company (American Summit), that Bauer had been retained to represent the Garcia's in the negotiation and settlement of their claim. The notification was signed by Bauer with the notation "For The Firm."
- 12. On or about February 23, 2001, Berenter and Kane met with American Summit's adjuster to walk-thru the damages to the Garcia's home. Bauer was not physically present at this walk-thru. Berenter assessed all of the damages. Kane's role was limited to answering one or two of Berenter's questions.
- 13. In and around February and March 2001, Berenter sent six (6) pieces of correspondence with various demands to American Summit to negotiate the settlement of the Garcia's claim. These documents were all signed by Berenter and included the notation "For The Firm." All correspondence and discussions with American Summit about the scope and the settlement of the Garcias' claim were conducted by Berenter.

COUNT III

14. In or around March 2001, Bauer entered into a representation agreement with Juanita Gamble (Gamble) to investigate and negotiate a settlement of a fire loss claim at her home.

- 15. On or about March 5, 2001, Berenter notified Gamble's insurer, Scottsdale Insurance Company (Scottsdale) that Bauer had been retained to represent Gamble in the negotiation and settlement of her claim. The notification was signed by Berenter with the notation "For The Firm."
- 16. On or about March 5, 2001, Bauer contacted Scottsdale's adjuster by phone and advised the Scottsdale adjuster to meet with Bauer's adjuster "Berenter" at the Gamble home to conduct a walk thru to assess the damages.
- 17. On or about March 7, 2001, Berenter and contractor Harold Mahler (Mahler) met with Scottsdale's adjuster to walk-thru the damages to Gamble's home. Bauer was not physically present at this walk-thru. Berenter assessed all of the damages. Mahler's role was limited to answering one or two of Berenter's questions.
- 18. In and around March 2001, Berenter sent three (3) pieces of correspondence with various demands to Scottsdale to negotiate the settlement of Gamble's claim. These documents were all signed by Berenter and include the notation "For The Firm." All correspondence and discussions with Scottsdale about the scope and settlement of Gamble's claim were conducted by Berenter.

CONCLUSIONS OF LAW

- 1. The Director has jurisdiction over this matter.
- 2. An "adjuster," as defined in ARS 20-281(A), is any person who, for compensation as an independent contractor or as the employee of such an independent contractor, or for fee or commission investigates and negotiates settlement of claims arising under insurance contracts, on behalf of either the insurer or the insured.
- 3. Berenter's conduct constitutes acting as and holding himself out to be an adjuster without being licensed, within the meaning of A.R.S. § 20-312(A).

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4. Grounds exist for the Director to issue an order to cease and desist pursuant to A.R.S. §20-305.

ORDER

IT IS THEREFORE ORDERED THAT:

- Berenter shall immediately cease and desist from investigating and negotiating 1. settlements of claims arising under insurance contracts on behalf of others for compensation.
- 2. This Order shall become effective immediately and shall remain in full force and effect until otherwise stayed, modified, vacated or set aside.

DATED AND EFFECTIVE this 20 day of Agrist, 2001.

CHARLES R. COHEN Director of Insurance

NOTICE

The determination set forth in this Order is an "appealable agency action" pursuant to A.R.S. §41-1092. Consequently, you have the right to obtain a hearing on this determination by filing a Notice of Appeal within thirty (30) days after your receipt of this Order. If your Notice of Appeal is received after the thirty (30) day period, it will not be accepted without a demonstration of good cause for the late filing. The Notice of Appeal must identify the party appealing, the party's address, the determination being appealed, and must contain a concise statement of the reasons for the appeal. The Department of Insurance will serve a Notice of Hearing at least thirty (30) days before the hearing, which will inform you of the date, time and location of the hearing as well as the issues in controversy.

If you file a Notice of Appeal, you may also request an informal settlement conference by filing 1 a written request no later than twenty (20) days before the scheduled hearing. The conference will be 2 held within fifteen (15) days of your request. If an informal settlement conference is requested, a 3 person with authority to act on behalf of the Department of Insurance will be present. Please note that 4 5 you waive any right to object to the participation of the Department's representative in the final administrative decision of the matter if it is not settled. 6 The Notice of Appeal and request for Informal Settlement Conference described above 7 8 may be addressed to: 9 Deputy Director Arizona Department of Insurance 2910 North 44th Street, Suite 210 10 Phoenix, Arizona 85018 ATTN: Hearing Administration 11 12 COPIES of the foregoing mailed/delivered this 21st day of August, 2001, to: 13 David Alan Berenter 35 West Kaler Drive 14 Phoenix, AZ 85021 15 Shelby L. Cuevas 16 Assistant Attorney General 1275 West Washington Street Phoenix, Arizona 85007 17 Attorney for the Department 18 Francis L. Johansen 19 State Bar of Arizona 111 W. Monroe, Suite 1800 Phoenix, Arizona 85003 20 21 Office of Administrative Hearings 1400 West Washington, Suite 101

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